IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6768 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINODRAI VALJIBHAI OZA SINCE DECEASED THROUGH HEIRS

Versus

ASSISTANT GENERAL MANAGER

Appearance:

MR NIRZAR S DESAI FOR MR YN OZA for Petitioners

MR RAJESH DESAI FOR MR PRASHANT G DESAI for Respondents

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 06/10/2000

ORAL JUDGEMENT

#. The petitioner, by way of this petition, has challenged the order dated 15.11.89 by which his services were terminated.

#. The petitioner was working as the Branch Manager of Dena Bank at its Bedeshwar branch during 1984-85. It was found that some gross irregularities were committed by him in respect of credit facilities which were sanctioned/ disbursed to various borrowers. He did not verify the end use of the loan. He accepted quotations, bills of non existing firms/ dealers, without considering viability and feasibility of the proposal; amount was sanctioned/ disbursed and in most of the cases of loan, amount that was disbursed has not been received in full from the borrowers. In the chargesheet, cases of eleven parties were referred indicating aforesaid aspects. After the chargesheet and following the proper procedure, detailed inquiry was conducted; witnesses were examined and cross examined in detail, which is clear from the paper book. After considering the evidence, documentary evidence and written submissions, the inquiring authority held that:

(i) in case of seven account holders, the delinquent had not verified the end user of funds;

(ii) had accepted quotations/ bills of non existing firms/ dealers;

(iii) had disbursed loan amounts and were not received in full;

(iv) that without considering viability and feasibility of the proposals, had sanctioned/ disbursed various loans in a fraudulent manner disregarding the interest of the Bank in the process, causing wrongful gain to the borrowers / himself and wrongful loss to the bank

(v) In the case of Varis Ceramic Company, the charge was to the effect that he had not only not complied with the terms of sanction in respect of the proposal of the borrower, but had also misrepresented the fact in as much as the machinery already charged to G.S.F.C. was proposed to be taken as additional security against advance recommended by him.

The inquiring officer held that the misconduct levelled against the delinquent was proved.

#. The submission made by learned counsel appearing for the petitioner Mr.Nirzar S. Desai is that the inquiry officer's report was not submitted and denial of right to copy of the inquiry report amounts to denial of reasonable opportunity and is violative of Article 14 & 21 of the Constitution and also principles of natural justice. At the time when the action was taken, in accordance with the rules, report was submitted.

#. The learned counsel for the respondent submitted that as pointed out by the Apex Court in the case of Managing Director, E.C.I.L., Hyderabad v. B. Karunakar & Ors. reported in (1993) 4 SCC 727, the ratio in the case of Union of India v. Mohd. Ramzan Khan reported in (1991) 1 SCC 588 would apply prospectively from the date of the judgment only. It does not apply to all matters which either have become final or are pending decision at appellate forum or in the High Court or Tribunal.

#. It is not possible for this court to sit in appeal over the decision rendered by the authority. Not a single defect is pointed out to the court, no doubt, the learned counsel for the petitioner submitted that the report which was required to be submitted was not submitted in accordance with law. The learned counsel for the petitioner placed reliance on the decision of the Apex court in the case of Mohd. Ramzan Khan (supra). However, it is made clear by the Apex Court subsequently in the case of Managing Director, E.C.I.L., Hyderabad v. B. Karunakar & Ors. (supra) and in the case of Commandant, Central Industrial Security Force & Ors. v. Bhopal Singh, reported in (1993) 4 SCC 785, that the law laid down in Mohammad Ramzan's case (supra) is prospective in operation. It is required to be noted that they were under no obligation to supply a copy of the inquiry report before imposing the penalty. The Hon'ble Supreme Court pointed out that reversing the orders and directing to proceed from that stage would be a needless heavy burden on the administration in the terms encouraging the delinquent to abuse the office till final orders are passed and thus it is held by the Apex Court that the ratio in Mohammad Ramzan's case (supra) would apply prospectively from the date of judgment only to the cases in which decisions are taken and orders made from that date and does not apply to all the orders which either have become final or are pending decision at appellate forum or in the High Court or the Tribunal.

#. Thus, there is no merit in the contention raised by the learned counsel for the petitioner. The Apex Court has pointed out in the case of Apparel Export Promotion

Council v. A.K.Chopra, reported in (1999) 1 SCC 759 that the High Court normally should not interfere unless such findings are based on no evidence or are wholly perverse and/or legally untenable. The Court pointed out that the High Court cannot function as an appellate authority and substitute its own conclusion as to the guilt of the delinquent. The question of adequacy of evidence is outside its purview. The Court with regard to the nature and scope of judicial review, pointed out that it is not concerned with the correctness of the decision but it confined to the examination of decision making process, namely, the established principles of law and rules of natural justice and fairness have been followed or not. In the case of State Bank of India & Ors. v. T.J.Paul, reported in (1999) 4 SCC 759, wherein the bank's employee's services were terminated on account of misconduct of doing an act prejudicial to the interest of the bank or gross negligence involving or likely to involve the bank in serious loss, it was held that proof of actual loss was not necessary to attract this clause. Likelihood of loss was enough to hold an employee guilty. In that case the respondent-bank officer was charged to have sanctioned loans without adequate security and without prior approval/ ratification from the superior officers. In view of what is stated hereinabove, it is not possible to agree with the learned counsel for the petitioner and the petition is required to be dismissed and the same is accordingly dismissed. Rule discharged. No order as to costs.

.....

(sunil)